

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Initially, Applicants would like to thank the Examiner for the indication that claims 48-50 and 60-62 are allowed and that claim 39 contains allowable subject matter.

In the Official Action, the Examiner rejects claims 35-40 under 35 U.S.C. §112, second paragraph as being indefinite.

With regard to claims 35, 37, 39, and 40, the same have been amended to remove the phrase "or the like".

With regard to claim 38, the same has been amended to depend on claim 37 to provide an antecedent basis for "said second screen".

Accordingly, it is respectfully requested that the rejection of claims 35-40 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In the Official Action, the Examiner rejects claims 35, 36 and 40 under 35 U.S.C. §102(e) as being anticipated by U.S. patent application publication no. 2002/0032470 to Linberg (hereinafter "Linberg"). Additionally, the Examiner rejects claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Linberg in view of U.S. patent 6,675,801 to Wallace et al. (hereinafter "Wallace").

In response, Applicants respectfully traverse the Examiner's rejections under 35 U.S.C. §§ 102(e) and 103(a) for at least the reasons set forth below. However, independent claims 35 and 40 have been amended to clarify their distinguishing features.

Turning now to the prior art, Linberg provides a system for remote troubleshooting of implantable medical devices (IMDs). A programmer computer 20 (Fig. 1) is in two-way communication with a remote web-based expert data center, and in wireless

telemetry communication with the IMDs. The remote center 62 can remotely assess, monitor, evaluate for failure or conduct other performance checks on the programmer computer 20 to implement a remote solution to a problem (Abstract).

Linberg teaches (at paragraphs. 0052 and 0060) that a physician or other operator can use an input device 82 (Fig. 3A) such as a keyboard to communicate with the programmer computer 20. The operator may also use a graphics display screen to point to various locations on a screen or display that displays menu choices for selection. Additionally, the display screen 84 is also used to display patient related data and menu choices and data entry fields used in entering the data. However, Linberg fails to disclose or suggest displaying information of recovery operations and/or an operation related to recovery operations to be carried out in response to a selection by a user.

Instead, at paragraph 0075, Linberg provides a high-level logic flow chart relating to data management of the programmer computer 20 and a session relating to the evaluation/debugging of the data management system by the remote expert data center 62. In this case, at a decision step 412, if the issue deals with a software upgrade and/or troubleshooting, the task is performed under logic step 414, and the system is checked to verify the accuracy and completeness of the implemented remedy under logic step 416. Thus, Linberg only teaches that the programmer computer 20 automatically executes troubleshooting logic without the input of the operator. As discussed below, Wallace does not cure the deficiencies of Linberg.

As discussed above, independent claims 35 and 40 have been amended to clarify such distinguishing features. Dependent claims 37 and 39 have been amended to be consistent with their amended base claim (35). The amendment to claims 35, 37, 39, and 40 are fully

supported in the original disclosure. Thus, no new matter has been entered into the disclosure by way of the amendment to claims 35, 37, 39, and 40.

With regard to the rejection of claims 35, 36, and 40 under 35 U.S.C. § 102(e), a maintenance method for performing maintenance with a medical control apparatus and a recording medium storing a program for the same, having the features discussed above and as recited in independent claims 35 and 40, is nowhere disclosed in Linberg. Since it has been decided that “anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,”¹ independent claims 35 and 40 are not anticipated by Linberg. Accordingly, independent claims 35 and 40 patentably distinguish over Linberg and are allowable. Claim 36 being dependent upon claim 35 is thus at least allowable therewith. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 35, 36, and 40 under 35 U.S.C. § 102(e).

With regard to claims 37 and 38, since independent claim 35 patentably distinguishes over the prior art and is allowable, claim 36 is at least allowable therewith because it depends from an allowable base claim.

Furthermore, Applicants respectfully submit that dependent claims 36, 37, and 38 patentably distinguish over the cited references independently of their base claim (35).

With regard to dependent claim 36, the same sets forth that a screen display is provided in a menu format screen displaying trouble items in general major items and more specific sub-items contained in said major items. As discussed above, Linberg is not concerned with displaying information of recovery operations and/or an operation related to recovery operations to be carried out in response to a selection by a user. Moreover, Linberg provides no

¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

details of any such menu system. Applicants respectfully submit that the passages cited by the Examiner with regard to the features of claim 36 simply fail to disclose or suggest the claimed features.

With regard to dependent claim 37, Wallace is concerned with a graphical user interface for a ventilator, and is cited as teaching a hierarchical user interface. Wallace provides an upper screen area 60 and a lower screen area 70 (Fig. 3). However, there is no disclosure or suggestion that one of the screens is used for displaying trouble items, while another is used for displaying information of recovery operations and/or an operation related to recovery operations, as set forth in claim 37 and claim 38 depending therefrom.

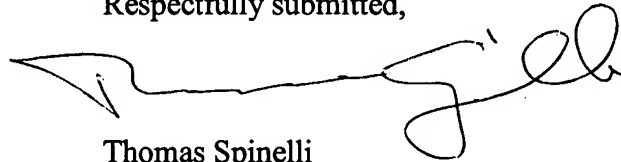
Thus, Applicants respectfully submit that dependent claims 36, 37, and 38 patentably distinguish over the cited references and are allowable.

Still further, Applicants respectfully submit that it would not be obvious to combine the teachings of Linberg and Wallace as suggested by the Examiner since they are concerned with different technical problems. That is, Linberg is concerned with remote monitoring of implantable devices, while Wallace is concerned with a graphical user interface for local control of a ventilator. Therefore, those of ordinary skill in the art at the time of the invention would not look to Wallace for combination with Linberg, and vice versa. Therefore, the rejection of claims 37 and 38 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Lastly, claims 48, 60, 62, and 63 have been amended only to further improve clarity. Claim 63 has been further amended to recite a method that is performed by executing the program stored on the recording medium. No new matter has been introduced into the disclosure by way of the clarifying amendments to claims 48, 60, 62, and 63.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Spinelli', with a long horizontal stroke extending to the left.

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